

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3670 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANAV INDUSTRIES & ANR.

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR AD MITHANI for MR PM RAVAL for Petitioners
MR NIGAM SHUKLA for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

1. The counsel for the petitioners state that this Sp.Civil Application has become infructuous, and as such, the same may be dismissed as having become infructuous. Ordered accordingly. Rule discharged. The stay order passed by this Court on 1-8-1983 stands vacated.
2. The petitioners prayed for the issuance of the writ or direction directing the respondents to forthwith

release the petitioners' truck No. GTX 3969 stopped at Bhilad. The second prayer has been made that by issuing a permanent injunction, the respondents, their officers and/or agents be restrained from preventing the petitioners from exporting groundnut oil out of the State of Gujarat to other states except in accordance with law. The third prayer has been made to declare the action of respondent no.1 in preventing the petitioners' truck carrying groundnut oil from Junagadh to Bhilad as illegal and without authority and jurisdiction. The fourth prayer has been made to direct the respondent to forthwith permit the petitioners' tanker to proceed to its destination till and pending the hearing and final disposal of this petition. The fifth, sixth, seventh and eighth prayers are as under:

to issue a writ of mandamus or any other appropriate writ, order or injunction directing the respondents to forthwith release goods of the petitioner till and pending the final disposal of this petition;

to direct the respondents to pay the damages to the petitioners suffered on account of illegal stoppage of the petitioners' truck;

to direct the respondents to pay personally the costs of this petition;

to grant such other and further reliefs as deemed fit and proper.

3. The facts of the writ petition are as follows:

The petitioner no.1 is a registered partnership firm carrying on business of producing and manufacturing groundnut oil of which the petitioner no.2 is a partner. The petitioners have taken on lease an oil mill at Junagadh with effect from 20-11-1981 and since then the petitioner is producing and manufacturing the groundnut oil from groundnut seeds. The petitioners are possessing various licences i.e No.46 under Gujarat Essential Articles (Dealers and Licensing) Order, 1981. The petitioners are also holding wholesale licence No.187. Both the aforesaid licences have been issued by the State of Gujarat and/or their officers. The petitioners are also having sales-tax number both under the State and Central Act. The case of the petitioners is that they are not producing or manufacturing any other oil except ground nut oil at their oil mill. They are carrying on their business of selling groundnut oil outside the State

of Gujarat as they have their clients in various States such as Rajasthan, Maharashtra, Punjab, Haryana and Madhya Pradesh. The petitioners have given out their ignorance that any ban is placed on export of groundnut oil outside the State of Gujarat to any other State in the country. The dispute arises when the petitioners sent tanker containing groundnut oil to Bombay by Truck No. GTX 3969 which was sent through Transport Broker on 28th July, 1983. The petitioners have also given out the necessary details of the owner of the truck/tanker, and the Driver who was driving the truck together with the driving licence number. The petitioners under the prevailing practice, what they state, are required to send information to the Collector in prescribed format giving particulars regarding the person who sends such consignment outside the State of Gujarat and also the name of the persons to whom it has been sent with all other relevant details. This information is required to be sent in prescribed form and the same was sent by registered A.D. to the Collector of Junagadh on 28th July, 1983. The petitioners further submit that under the procedure, certain documents are required to be accompanied with the truck and/or Tanker when the goods are sent outside the State of Gujarat and one such document is declaration under sec. 49A (3) of the Gujarat Sales Tax Act under form No.45A. Thereafter the petitioner has given out the necessary information of the documents which were carried by the aforesaid tanker. When the said Tanker reached at check-post on the border of Gujarat State at Bhilad it was intercepted by the Officers of the Civil Supplies Department. The tanker was prevented by the officers of the department from proceeding further. This has given cause of action.

4. On 1-8-1983 notice was issued. Thereafter the matter has come up for admission on 3-8-1983 on which date rule was issued and ad-interim relief in terms of Para no.19(d) has been granted. The para no.19(d) has already been reproduced above. The petitioner has enjoyed the benefit of the interim relief for all these years and now the counsel for the petitioners has stated that this petition be dismissed as having become infructuous. The question which arises for consideration of this Court is whether the petitioners who have not taken the decision on merits of the case, can be allowed to take the benefits of the interim relief which has been granted by this Court.

5. The Apex Court in the case of Senior Horticulturist & Anr. Vs. Mallaiah has held that, if the employee is allowed to reap benefit from interim

relief without the final adjudication by the court it will tantamount to permitting the employee to abuse the process. The petitioner has by filing this petition got the interim relief and after reaping the benefits thereof, when the matter has come up for final hearing he refrained itself from taking any final adjudication on the merits of this case by praying for withdrawal or otherwise of this petition. This shows how the process can be abused by obtaining interim order and thereafter allowing the petition to lapse after the purpose is served. This court will not allow the petitioners to abuse the process of the court.

6. The interim relief granted by this court is vacated as stated earlier, and as such, it is hereby clarified that whatever benefit has been taken by the petitioner under the interim order of this court is repayable or returnable or restorable by the petitioner from the respondents. The respondents are directed to determine the amount, if any, to be recovered from the petitioners and the same may be recovered from the petitioners.